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AUTHOR Colbert, Judith A.
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ABSTRACT

This paper examines licensing from the provider's point of view. It is based on the premise that a healthy relationship between the licenser and licensee is based on knowledge and the free exchange of information. More specifically, four areas are examined: (1) licensing, as one of the many forms of regulation in our society; (2) legislation, as the authority granting the right to license (the roles of licensing statutes and regulations are discussed, as well as the overall points a licensee should know); (3) literature, which highlights the importance for licensees to have as much background knowledge as possible in relation to licensing requirements and the relevant literature in their field; and (4) locality, which underlines the importance of providers' knowing their particular licensing situations, especially when licensed settings are shared with work sites, churches, schools, or other organizations. The paper suggests that licensing is a powerful tool for regulating service delivery and protecting the health, safety, and welfare of vulnerable populations. It asserts that if all parties know and accept their roles in the licensing process, they are more likely to ensure better outcomes for children, families, and society at large. (AA)

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LICENSING FROM THE PROVIDER'S POINT OF VIEW

A Paper Presented at the 1995 Annual Conference of the National Association for the Education of Young Children

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by

Judith A. Colbert, PhD

Child Care Consultant and Licensing Training Specialist

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LICENSING FROM THE PROVIDER'S POINT OF VIEW

Too often providers are in the dark about licensing. They know they must comply with licensing requirements but may not understand why, or why they must do so in particular ways. They may not be fully aware of their rights as licensees. They may see licensing as a tool that reduces risks and thus protects the health, safety and welfare of children, but may not recognize its potential to empower all participants in the licensing process and lead directly to better care - and thus better outcomes - for children, families and society.

The purpose of this presentation is to shed light on the licensing process from the provider's point of view. The remarks that follow are based on the premise that a healthy relationship between the licensor and licensee is based on KNOWLEDGE and the free exchange of information. A healthy relationship is, in fact, a BALANCED relationship that rests on a fulcrum of KNOWLEDGE.

To participate fully in such a relationship, licensees must take some time to LEARN. In particular, they must learn about four key L-words:

1. Licensing
2. Legislation
3. Literature
4. Locality.

1. LICENSING

Licensing is one of many forms of regulation in our society.

When government's exercise their authority to licence, they are using a tool that helps them carry out their policies. More specifically, licensing permits governments to control - or regulate - certain activities by demanding compliance with requirements that are in keeping with their policies. In return for that compliance, governments grant licensees the right to carry out activities that are otherwise prohibited.

In summary, licensing provides an enablement that represents the administrative lifting of a general prohibition. For example, no one can drive a car without a valid driver's licence. In most jurisdictions, no one can care for groups of children on a regular basis without a licence (the size of the group varies from jurisdiction to jurisdiction). Further, while a licence gives a licensee a fundamental right to operate, it may also require compliance with other forms of regulation, most notably regulations governing fire, health, building and zoning.

2. LEGISLATION

The authority to license is granted in legislation. Licensing laws reflect the wishes and accepted norms of society in general and apply to the population as a whole. Although they embody the minimum standard of operation within the licensing jurisdiction, that standard is not necessarily the lowest possible standard. Rather, it is as high or as low as society will tolerate.

Licensing legislation is remarkably similar across jurisdictions. Typically, licensing legislation includes two parts: a statute or act of a legislature that provides permission for an activity, and detailed regulations or rules that determine how an activity must be carried out.

More specifically, the statute may set out

- the intent or purpose of the legislation (directly or indirectly)
- what is prohibited/permitted and under what conditions
- the powers of the licensor to make regulations/rules, monitor compliance with licensing requirements and apply sanctions
- the rights of the licensee, including the right to due process of law (for example, in many jurisdictions, that includes the right to a review of unfavourable licensing decisions by an impartial body).

The regulations/rules provide for the carrying out of the detailed purpose of the licensing statute and serve as a basis for licensing requirements. Depending on the jurisdiction, they may relate to all aspects of the permitted activity.

Compliance is monitored by licensing staff who provide TECHNICAL ASSISTANCE or information that enables licensees to meet mandatory licensing requirements. This information is similar for all licensees and is most often PREVENTIVE. Licensing staff should always provide a written record of technical assistance.

Licensing staff may also provide CONSULTATION or information that relates to other matters or that extends beyond compliance when licensing requirements have been met. Consultation is tailored to specific situations and may or may not be preventive. Licensees may choose to accept or reject advice given in the form of consultation. The distinction between technical assistance and consultation is a major source of misunderstanding between licensees and licensing staff.

To assist in monitoring and assessing compliance, licensors develop policies and directives and produce manuals, guidelines, checklists and other documents. Such documents are tools that facilitate the licensing process and should not be confused with statutes and rules or regulations that have the force of law.

Following their inspections, licensing staff make decisions relating to the issuing and renewing of licences as well as the application of sanctions. At other times, especially when they judge that there is a threat to the health, safety or welfare of the children being cared for, licensing staff may also decide to apply sanctions. When such licensing decisions are being made, it is important for licensees to be aware of their rights and take steps to exercise those rights, if the need arises.

In summary, it is imperative that licensees know

- their rights and responsibilities as set out in legislation
- the regulations/rules they must follow
- the difference between technical assistance and consultation
- the difference between documents that have the force of law and documents that merely facilitate the licensing process.

3. LITERATURE

It is also imperative that licensees have as much background knowledge as possible in relation to licensing requirements. Providers should make special efforts to become familiar with the literature of their field, including publications such as *Young Children*, *Child Care Information Exchange*, academic journals, government publications and other materials. It is also important to become familiar with other sets of standards, including those developed as quality assessment tools. They should also talk to other providers and to licensing staff about what they have read with a view to arriving at the best way to achieve compliance with specific licensing requirements.

4. LOCALITY

It is important for providers to know their licensing situation. They may be operating under limitations that the licensor does not fully understand. This is particularly true when licensed settings are shared with work sites, churches, schools or other organizations.

In preparation for licensing inspections, licensees should ensure that they can describe their situations accurately and objectively to licensing staff. On such occasions they should strive to provide licensing staff with evidence that supports the choices or decisions they have made in an effort to achieve compliance.

THE OUTCOME

Ultimately, knowledge EMPOWERS. Licensees who are fully informed acquire the confidence to ask questions, make comments and generally participate more fully as partners in the licensing process. Licensing inspections come closer to being dialogues. Fear of the licensor is reduced. Attitudes are more positive. When positive relations exist between all participants, the licensing process is more likely to be seen in a positive light and licensees are motivated to achieve and maintain compliance. The professionalism of licensees is enhanced and licensors have increased respect for their knowledge and expertise.

Increased knowledge of the licensing process helps providers EMPOWER others. When licensees pass on their knowledge to staff, parents, legislators and the public, they, too, acquire confidence. Staff work more effectively when they understand why they must meet licensing requirements and have greater knowledge of what is necessary for compliance. Parents are more vigilant. They choose care for their children more carefully, insist on compliance, and support legislative measures for children more fully when they have a greater understanding of licensing and its importance.

In such circumstances providers will have strong incentives to comply and be supported in their quest to achieve compliance. Licensors will also be supported and able to do their jobs more effectively. All participants will become more effective advocates for licensing, emphasizing its importance to legislators and the general public.

Licensing is a powerful tool for regulating service delivery and protecting the health, safety and welfare of vulnerable populations. If all parties know and accept their roles in the licensing process, exercise their rights as defined in legislation, and accept and carry out their responsibilities, they will do much to ensure better outcomes for children, families and society at large.